

REAL ESTATE PURCHASE AND SALE AGREEMENT

Tract 4

THIS AGREEMENT is made and entered into on this 20th day of May, 2010, by and between T16 Management Co., LTD solely as its capacity as Bankruptcy Plan Liquidating Agent for Cervantes Orchards & Vineyards, LLC under Bankruptcy Case No. 05-06600-JAR11 (“Seller”) and _____ (“Purchaser”).

BACKGROUND

A. Seller has been appointed by the Eastern District Bankruptcy Court (“Court”) under Cause No. 05-06600-JAR11 to liquidate and sell the Property subject to this Agreement.

B. The Court authorized the auction sale of the Property subject to this Agreement by orders dated April 8, 2010 and April 13, 2010 and entered with the Court. Such auction sale was held on May 20, 2010.

C. In order to qualify as a bidder at the auction sale, Purchaser deposited the sum of \$_____ (“Qualifying Deposit”) with Broker prior to the auction.

D. Purchaser was the highest bidder at the auction sale.

AGREEMENT

IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and other valuable consideration, receipt of which is acknowledged, Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller the Property subject to the following terms and conditions:

1. THE PROPERTY: The real property, including fixtures, improvements and appurtenances thereto (“Property”) which is the subject of this Agreement is legally described in **Exhibit 1**, situated in Yakima County Washington. The property being sold shall also include any wind machines located on the Property.

2. CLOSING DATE: Closing shall be no later than June 30, 2010 (the “Closing Date”). The parties agree that time is of the essence. If Purchaser fails or refuses to close the sale by the Closing Date, the Agreement shall be terminated and Purchaser shall immediately forfeit, to Seller, any and all Earnest Money. The forfeiture of any Earnest Money shall not constitute a limit or election of remedies

and Seller shall be entitled to additionally pursue Purchaser for any and all other damages caused by the Seller's refusal or failure to timely close the sale.

3. PURCHASE PRICE: The "Sale Price" shall be calculated by first adding the amount Purchaser bid at the auction sale and adding a Buyer's Premium equal to ten percent (10%) to that amount. The Purchaser shall also be responsible as part of the purchase price for paying the Growing Costs (as defined in paragraph 30) incurred by the Seller or its predecessors through the date of Closing as estimated on Exhibit 3 hereto. The growing costs will be part of the Purchaser's closing costs.

4. EARNEST MONEY: Prior to execution of this Agreement, Purchaser had deposited an amount with Broker in order to qualify Purchaser to become a bidder at the auction ("Qualifying Deposit"). Immediately upon the execution of this Agreement, Purchaser shall deposit an additional amount with Broker in an amount equal to ten (10) percent of the Sale Price minus the Qualifying Deposit. The intention of the parties is that immediately upon the execution of this Agreement, Purchaser will have deposited a total of ten (10) percent of the Sale Price with Broker. This ten percent (10%) deposit is referred to herein as the "Initial Deposit". Within forty-eight (48) hours of the execution of this Agreement, Purchaser shall deposit with the Escrow Agent an additional sum equal to twenty five percent (25%) of the Sale Price minus the Initial Deposit ("Full Earnest Deposit"). The Full Earnest Deposit shall be credited against the Purchaser's obligations at Closing. Within five (5) days of this Agreement, Broker shall deposit the Full Earnest Deposit with the Escrow Agent. In the event the Purchaser fails to close this transaction without legal excuse, in addition to its other rights and remedies, Seller shall be entitled to retain any earnest money paid by Purchaser to apply against Purchaser's obligations hereunder or as otherwise ordered by the Court and such retention of earnest money shall not constitute an election of remedies or in any way limit the damages recoverable by Seller.

5. METHOD OF PAYMENT: Cash at closing.

6. AGENCY DISCLOSURE: At the signing of this Agreement, the Broker represents Seller. Each party signing this document confirms that prior oral and/or written disclosure of agency was provided him/her in this transaction. Each party confirms that he/she has received and reviewed a pamphlet entitled, "The Law of Real Estate Agency."

7. PURCHASER'S REPRESENTATION: Purchaser represents that Purchaser has sufficient funds available to close this sale in accordance with this Agreement and is not relying on any contingent source of funds unless otherwise set forth in this Agreement. Purchaser further represents and warrants that

Purchaser has the ability and experience necessary to farm, care for and maintain the Property in a customary and good husband like fashion. In the event Seller determines, in its sole judgment, that any of Purchaser's representations or warranties set forth in this Agreement have been breached, Seller may, at its option, terminate this Agreement without recourse.

8. TITLE INSURANCE: Purchaser understands and agrees that Seller is not obtaining and has no duty to obtain a title commitment relating to the Property. Purchaser is not relying on any representation of Seller relating to the title or status of the same on the Property. If Purchaser wishes to obtain a title commitment covering the Property, Purchaser shall do so in Purchaser sole discretion and expense. This Agreement and Purchaser's duty to close hereunder is not conditioned on either the receipt of any such title commitment or the results from any such title commitment.

9. UTILITIES: Seller makes no representation as to the availability of utility services.

10. CLOSING:

a. Seller and Purchaser shall each deposit any instruments or documents that are reasonably required by Escrow Agent, Fidelity Title Co., or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

b. Seller shall convey to Purchaser fee simple title to the Property by duly executed and acknowledged Quit Claim Deed.

c. Purchaser and Seller agree that the closing of this Agreement shall occur at the offices of the Escrow Agent.

d. Seller and Purchaser agree to sign all documents and take all actions which are reasonably necessary to consummate the transaction contemplated by this agreement in a timely fashion. Seller and Purchaser agree that time is of the essence in the performance of this Agreement. Closing is defined as the date that all documents are executed and the sale proceeds are available for disbursement to the Seller.

11. CLOSING COSTS AND PRORATIONS: Purchaser shall pay all closing costs, including, without limitation, Broker's fees and commissions, title insurance premiums, excise tax, sales or use tax, cost of document preparation, any escrow fees for closing and cost of title insurance. Real estate taxes, irrigation assessments and personal property taxes shall be pro-rated as of the date of Closing. Purchaser shall be responsible for payment of its own fees for professional advisors. Seller shall not be responsible for any costs of closing.

12. POSSESSION: Purchaser shall be required to take possession within forty-eight (48) hours of the culmination of the auction. Prior to taking possession, Purchaser must pay the Full Earnest Deposit under this Agreement. Upon possession, the risk of damage or other loss to the crop immediately passes to the Purchaser and Purchaser assumes full responsibility for the care and maintenance of the crop and the Property, including, without limitation, the duty and obligation to farm the Property in a good and husbandlike manner. Such care and maintenance shall include continuing to care for the Property as an organic orchard. The crops growing on the Property continue to be property of the Seller until Closing.

13. INSURANCE: During occupancy prior to possession, Purchaser(s) shall maintain public liability insurance with personal injury limits of at least \$500,000 for injury to one person, and \$1,000,000 for any one accident, and a limit of at least \$50,000 for damage to property. Purchaser(s) shall deliver appropriate evidence to Seller providing proof that adequate insurance is in force prior to possession. The insurance that the Purchaser has to maintain shall add the Seller as an Additional Insured.

14. WORK PERFORMED/IMPROVEMENTS: Should the sale fail to close for any reason, Purchaser shall not be entitled to any reimbursement for any work performed upon the subject property. This shall include, with limitation, any claim Purchaser may have based upon unjust enrichment.

15. ASSIGNMENT: Purchaser's rights under this Agreement may not be assigned by Purchaser without Seller's prior written consent, which consent shall be at Seller's sole and absolute discretion.

16. FIRPTA COMPLIANCE: Seller and Purchaser agree to comply with FIRPTA, if applicable.

17. NOTICES: Unless otherwise specified in this Agreement, any and all notices required to be given under this Agreement must be given in writing. Notices to Seller shall be deemed to be given when actually received by or at the office of the Seller. Notices to Purchaser shall be deemed to be given when placed in the mail by Seller.

18. COMPUTATION OF TIME: Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 4:00 p.m. of the last calendar day of the specified period of time, unless the last day is Saturday,

Sunday or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 4:00 pm. of the next business day. Any specified period of seven (7) days or less shall include business days only.

19. DEFAULT/TERMINATION:

a. If the Purchaser fails, without legal excuse, to complete the purchase of the Property, Seller shall have the option to:

- i. Retain the earnest money as liquidated damages;
- ii. Collect actual damages;
- iii. Obtain specific performance together with any incidental damages; and/or
- iv. Obtain such further or additional relief as may be allowed by this Agreement or by law.

b. If the Seller fails, without legal excuse, to complete the purchase of the Property, Purchaser shall have the option to:

- i. Have the earnest money returned less any costs authorized under this Agreement to Purchaser. This shall constitute the sole and exclusive remedy available to Purchaser for Seller's failure or refusal to close.

20. GENERAL PROVISIONS: Time is of the essence. There are no verbal agreements which modify this Agreement. This Agreement constitutes the full understanding between Seller and Purchaser. Purchaser has personally observed the Property and has reached Purchaser's own conclusion as to the adequacy and acceptability of the Property based upon such personal inspection. Unless otherwise expressly specified herein, square footage, dimensions and/or boundaries used in marketing the Property are understood to be approximations and are not intended to be relied upon to determine the fitness or value of the Property.

21. LEGAL AND TAX IMPLICATIONS: This Agreement affects the legal rights and obligations of both Seller and Purchaser and will have tax implications. The parties acknowledge that they are aware that agents are not permitted to give legal or tax advice. Purchaser acknowledges that Purchaser has been advised to seek legal counsel regarding this Agreement and related documents, and that Purchaser has been given the opportunity to do so. Further, if a dispute arises regarding this transaction, the prevailing party(ies) shall recover costs and reasonable attorneys' fees, including those for appeals, and the venue shall be, at the option of Seller, in Yakima County, Washington or the Eastern District Bankruptcy Court for the State of Washington..

22. FACSIMILE TRANSMISSION/COUNTERPARTS: Facsimile or electronic transmissions of any signed original document and retransmission of any signed transmission shall be the same as transmission of any original. At the request of either party or Closing Agent, the parties will confirm facsimile transmitted signatures by signing the original document. This Agreement may be executed in counterparts which shall have the same legal effect as if the signatures were contained all on one document.

23. AS-IS/WHERE-IS SALE: Seller makes no representations or warranties of any kind whatsoever to Purchaser, except as expressly set forth in this Agreement. Without limitation to the generality of the foregoing, Purchaser acknowledges and agrees as follows:

a. That the Property is to be conveyed by Seller to Purchaser in “AS-IS/WHERE-IS” condition, with any and all faults. Purchaser acknowledges that the unconditional “as-is” nature of this transaction is a material inducement to Seller to enter into this Agreement and to sell the Property to Purchaser at the purchase price and upon the other terms and conditions set forth herein.

b. That except as specifically set forth in this Agreement, Seller has not made, does not hereby make, and shall not make and expressly disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or nature whatsoever, whether express or implied, oral or written, past or present, with respect to the Property, including but not limited to the following: (1) the nature, quality or condition of the soil, water rights, water (if any) or geology of the Property, (2) existing conditions of the Property for any particular purpose of development potential, (3) any income to be derived from the Property, (4) the suitability of the Property for any and all activities and uses which Purchaser or any other party may conduct thereon, (5) the compliance of the Property with any laws, rules, ordinances, covenants, conditions or restrictions of any governmental authority or any other person, (6) the habitability, merchantability, or fitness of the Property for any purpose, (7) the design of any improvements located on the Property, (8) the nature or quality of construction, structural design, and/or engineering of such improvements, (9) the quality of labor and/or materials (including the composition thereof) used in such improvements, (10) the condition of the Property with respect to any materials or substances which may now or hereafter be considered by any governmental authority or any other person to be dangerous, explosive, flammable, infectious or otherwise hazardous, and/or (11) any other matters with respect to the Property. This disclaimer is specifically made with respect to solid waste, as defined by the United States Environmental Protection Agency regulations at 40 CFR Part 261 and/or the disposal of solid waste; and the existence of any hazardous substance as defined by the Comprehensive Environmental Response Compensation and Liability Act of

1980, as amended, and the regulations promulgated there under, as well as any comparable state or local laws, ordinances, rules or regulations.

c. Purchaser hereby acknowledges and agrees that Purchaser has been given the opportunity to inspect the Property as Purchaser sees fit, and Purchaser shall rely solely on such investigations and on such explicit representations or warranties as Seller may make in this Agreement and not on any other information furnished by Seller in making Purchaser's decision to purchase or not to purchase the Property.

d. Purchaser hereby assumes all risks associated with ownership of the Property and any defects that may be located thereon or associated therewith of any type or nature whatsoever, and Purchaser shall be solely responsible for and shall indemnify, protect, defend and hold Seller harmless from all costs (including attorneys' fees and court costs), expenses and all other claims, demands, costs, expenses, causes of action or other matters incurred in or associated with such ownership and with the presence, removal or repair of any such defect. The foregoing indemnity shall survive Closing and remain fully enforceable by the Seller.

24. TAX CLASSIFICATION: It is understood between the parties that the Property has been classified as open space land, farm and agricultural land, or timber land under RCW 84.34. The Purchaser shall sign a Notice of Classification Continuance as a part of the Real Estate Excise Tax Affidavit in connection with this transaction. In the event all or a portion of such designation shall be removed, any additional or compensating tax imposed as a result thereof and any applicable interest or penalty thereon shall be paid by the Purchaser.

25. CASUALTY LOSS: If, prior to the date Purchaser is entitled to possession of the Property, the Property is destroyed or materially damaged by any means, except resulting from Purchaser's negligence or intentional acts or omissions, Purchaser may elect to terminate this Agreement and the earnest money shall be refunded to Purchaser.

26. PROPERTY INFORMATION PACKET: Purchaser represents that it has reviewed the Property Information Packet ("Packet") prepared by Western Real Estate Auctions of Eltopia, Washington (the "Broker"), which was made available to Purchaser on the Broker's website and in both electronic and printed formats. Purchaser represents that it has full knowledge of the contents of the Packet, and Purchaser consents to any restrictions on the Property, including proposed easements and covenants, set forth in the Packet. Purchaser understands and agrees that none of the information contained in the Packet or any information obtained by Purchaser from Western constitutes a representation or warranty of the

Seller. The Seller makes no representations or warranties other than those expressly made in this agreement.

27. ENTIRE AGREEMENT: Seller and Purchaser agree that this Agreement is the entire agreement between the parties and is not modified or affected by any prior or contemporaneous oral or written statements or information provided by Seller or Broker

28. CORRECTION OF LEGAL DESCRIPTION: Seller and Purchaser hereby authorize the Closing Agent to insert in over their signatures the correct legal description of the Property, if such legal description is unavailable at the time of signing this Earnest Money Agreement and further authorize the Closing Agent to correct the legal description if said legal description is erroneous or incomplete.

29. SURVIVES CLOSING: All terms of this Agreement which are not satisfied or waived prior to closing shall survive closing. These terms shall include, but not be limited to, representations and warranties, attorneys' fees and costs, disclaimers, repairs, rents and utilities, etc.

30. GROWING COSTS: At closing Purchaser shall pay the growing costs incurred by Seller (or its predecessors) to the date of closing ("Growing Costs"). The Growing Costs shall include management fees, pollination, power charges, irrigation district charges, chemicals, spray, labor and other costs associated with the 2010 crop on the subject property. An estimated itemized list of the Growing Costs is attached hereto as **Exhibit 3**. The final amount of Growing Costs shall be determined by Seller prior to Closing

31. FRUIT TREES ON PROPERTY: Regarding the fruit trees on the subject property, Broker and Seller make no warranty as to variety, health, or appropriateness for the location. Further, Broker and Seller make no warranty as to whether or not the origin of the trees had the appropriate fees paid to the patent holder or holders. Additionally, Broker and Seller make no warranties as to the condition of the irrigation system, including but not limited to the pumps, main lines, laterals, sprinkler heads, or any other element of the irrigation system.

PURCHASER

SELLER

T-16 Management Co. Ltd. solely as its capacity as Bankruptcy Plan Liquidating Agent for Cervantes Orchards & Vineyards, LLC under Bankruptcy Case No. 05-06600-JAR11

Name:
Title:

RECEIPT: On this date, _____, 2010, Purchaser acknowledges receipt of a copy of this Agreement signed by both parties.

Purchaser

Purchaser

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY